

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

In the specification, paragraph [0019] has been amended.

Claim 2 is requested to be cancelled.

Claims 1, 3, 7, 9 and 15 are currently being amended.

The drawings were objected to for including reference number 39 that was not mentioned in the description. Reference number 39 identifies the outer surface of jar 12. Paragraph [0019] has been amended to correct a typographical error in which reference numeral 39 replaced the incorrect reference numeral 38 to identify the outer surface of jar 12.

Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by Freeman et al. (U.S. 6,491,517 B2). It is submitted that claim 1 is patentable over Freeman et al. because the cited reference does not disclose every limitation of claim 1. Specifically, there is no evidence in Freeman et al. that the decorative elements have been positioned in a predetermined pattern. Rather, the heart shape elements appear to be placed in a general location but not a predetermined pattern. Additionally, Freeman et al. does not disclose a jar having “an opening and a first portion having a first cross sectional area that is greater than a second cross-sectional area of a second portion, the second portion being located between the first portion and the opening” as recited in claim 1. Rather Freeman et al. discloses containers in which the cross sectional area is either constant or continuously increases. Accordingly, claim 1 is patentable over Freeman et al.

Claims 2-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman et al. (U.S. 6,491,517 B2) in view of Riches (U.S. 2002/0150854 A1).

The Examiner has acknowledged that Freeman et al. does not disclose the following:

- the candle including an opening and a first portion having a first cross sectional area that is greater than a second cross-

sectional area of a second portion, the second portion being located between the first portion and the opening.

While Riches may disclose a “first portion, whose cross-sectional is greater than the cross-sectional area of a second portion, and a second portion that is located between the first portion and the opening” as suggested by the Examiner, Riches does not teach or suggest the use of this type of container with the placement of decorative elements in a predetermined pattern adjacent the interior surface of the container. The instant invention as recited in claim 1 specifically addresses the challenge of placing decorative elements adjacent the interior surface of the jar where the jar has is a first portion, whose cross-sectional is greater than the cross-sectional area of a second portion, and a second portion that is located between the first portion and the opening. Rather Riches teaches away from a predetermined pattern by the random location of the fruit. Further Riches teaches away from the placement of the decorative elements adjacent the interior surface by teaching the random location of the fruit within the center of the container. Accordingly it is submitted that claim 1 is patentable over Freeman et al. in view of Riches. Claim 2 has been canceled and claims 3-5 depend from claim 1 and are patentable over the cited references for at least the reasons noted above with respect to claim 1.

Claims 6-8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman et al. (U.S. 6,491,517 B2) in view of Riches and in further view of Freeman et al. (U.S. 6,241,512 B1). Claims 6-8 depend from claim 1 and are patentable over the cited references for at least the same reasons discussed above with respect to claim 1. The addition of U.S. Patent No. 6,241,512 does not provide the missing elements as discussed above with respect to claim 1. Accordingly, claims 6-8 are patentable over the cited references. It is noted that claim 7 has been amended to remove the typographical error at the end of the sentence.

Claims 10-11, 18 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman et al. (U.S. 6,491,517 B2) in view of Romanelli (1999). It is submitted that claims 10-11, 18 and 21 are patentable over the cited references, since neither Freeman et al nor Romanelli teaches, discloses or suggests the invention as claimed. Specifically with respect to claim 10 neither reference discloses the step of sliding a sleeve over the jar. Rather

Romanelli discloses a stencil that is applied directly to the wax candle itself. The Examiner asserts that Romanelli teaches “placing a stencil motif along the container’s outer surface, as taught by Romanelli.” It is respectfully submitted that Romanelli does not teach placing a stencil motif along the container’s outer surface. Rather Romanelli teaches placing a stencil directly on the wax candle itself and not on the jar. The step of sliding the sleeve over the jar is to permit the application of a predetermined pattern while avoiding the need to place a stencil directly on the wax candle. The Examiner has not provided any support for a sleeve that is placed over the jar as recited in the claims. Instead, the Examiner has simply noted that “[t]herefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing candle display of Freeman et al. (U.S. 6,491,517 B2) by placing a stencil motif along the container’s outer surface, as taught by Romanelli, for the purpose of allowing the decorative elements, which are placed along the container’s interior surface, to be aligned with the patterns found on a stencil motif”. The stencil disclosed in Romanelli is to provide a pattern both directly on the wax candle itself and not the outer surface of the candle. In contrast the instant invention as recited in claim 10 requires the sleeve to be placed over the jar, not to apply elements on the outer surface of the candle or the jar but rather to place the elements on the inside of the jar. Neither Freeman et al. nor Romanelli address the problem of applying a predetermined pattern on the inside of jar by placing a sleeve over the jar. The only support for sliding the sleeve over the jar and not directly to the wax candle itself is found in the applicant’s disclosure. It appears that the combination of references relied upon by the Examiner is based on improper hindsight reasoning, using the Applicant’s own disclosure as a roadmap in an attempt to render the present claims obvious. Accordingly, it is requested that the rejection of claim 10 be withdrawn.

Claim 11 depends from claim 10 and is patentable over the cited references for at least the reasons discussed above with respect to claim 10. However, Claims 12-14, 16 and 19-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman et al. (U.S. 6,491,517 B2) in view of Romanelli and in further view of Freeman et al. (U.S. 6,241,512 B1). It is submitted that claims 12-14, 16 and 19-20 depend from claim 10 and are patentable over the cited references for at least the same reasons discussed above with respect to claim

10. The addition of U.S. Patent No. 6, 241,512 does provide the missing element noted above with respect to claim 10. Accordingly, claims 12-14, 16 and 19-20 are patentable over the cited references. The claims are patentable over the cited references for other reasons as well. Regarding claims 14 and 19 the inclusion of the first layer of wax being a darker shade than the second layer of wax solves the problem, that the interior candle material or second layer of wax does not show through the first layer of wax. This is not taught in the cited references. Accordingly, claim 14 and 19 are patentable over the cited references.

Claim 17 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman et al. (U.S. 6,491,517 B2) in view of Romanelli and in further view of Riches. Claim 17 depends from claim 10 is patentable over the cited references for at least the same reasons discussed above with respect to claim 10. The addition of Riches does provide the missing element noted above with respect to claim 10. Accordingly, claims 17 is patentable over the cited references.

Claims 9 and 15 were objected to as being dependent upon a rejected base claim, but were indicated as allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 9 and 15 have been rewritten as noted suggested by the Examiner and are in condition for allowance.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1 and 3-21 are now pending in this application.


Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

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By 

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